

ELLEN F. ROSENBLUM
Attorney General
NINA R. ENGLANDER #106119
SHAUNEE MORGAN #194256
Assistant Attorney General
Department of Justice
100 SW Market Street
Portland, OR 97201
Telephone: (971) 673-1880
Fax: (971) 673-5000
Email: Nina.Englander@doj.state.or.us
Shaunee.Morgan@doj.state.or.us

Attorneys for Defendant State of Oregon

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PORTLAND GENERAL ELECTRIC
COMPANY, an Oregon corporation,

Plaintiff,

v.

STATE OF OREGON, by and through THE
OREGON DEPARTMENT OF STATE
LANDS, and +/- FIVE ACRES OF
UNIMPROVED LAND ALONG THE
WILLAMETTE RIVER NEAR WEST LINN,
OREGON,

Defendants,

and

CONFEDERATED TRIBES OF THE
GRAND RONDE COMMUNITY OF
OREGON, a federally recognized Indian tribe,

Intervenor-Defendants.

Case No. 3:22-cv-00533-SI

NOTICE TO COURT

As the Confederated Tribes of Siletz Indians (“Siletz Tribe”) correctly represented in its Local Rule 7-1 Certification, the State does not oppose the Siletz Tribe’s Motion to Intervene in this proceeding (“Motion”). (ECF No. 23). The State files this notice, however, to respectfully request that, in ruling on the Motion, the Court refrain from making any substantive determinations regarding the legal rights of any tribe to engage in cultural harvest at Willamette Falls, the source of such rights, or the scope of the State’s regulatory authority with respect to fish harvest. Instead, the State believes it appropriate for the Court to assume, without deciding, that the Siletz Tribe has the fishing rights that it asserts for the limited purpose of ruling on the Motion. In not opposing the Motion, the State makes no concessions regarding any issues, including the scope of its regulatory authority. *See Cmty. Nat. Bank v. Fid. & Deposit Co. of Maryland*, 563 F.2d 1319, 1323 (9th Cir. 1977) (issue preclusion inapplicable where an issue is not actually litigated or decided).

This condemnation proceeding is about fee simple ownership of the property PGE seeks to condemn (“Property”). The fee simple owner of the Property—whether PGE or the State—has the right to control *access* to the Property. The question of who has authority to *harvest fish* from the Property is a distinct and complex legal question. As the Siletz Tribe aptly states, “the exercise of treaty fishing rights is not a simple matter.” Siletz Reply iso Mot. Intervene at 5 (ECF No. 26); *see also* Mot. to Intervene at 6, 7-8 (ECF No. 23) (noting that the Siletz Tribe and the State do not necessarily agree on the scope of the State’s authority to regulate cultural harvest of fish and lamprey). To avoid unnecessarily broadening the narrow issue before the Court, the State respectfully requests that the Court refrain from making any substantive findings regarding

rights to harvest fish or the State's regulatory authority regarding such rights; instead, the Court should decide whether the Siletz Tribe satisfies the legal standards for intervention on the face of the papers submitted.

DATED September 12, 2022.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Nina R. Englander
NINA R. ENGLANDER #106119
SHAUNEE MORGAN #194256
Assistant Attorneys General
Trial Attorneys
Tel (971) 673-1880
Fax (971) 673-5000
Nina.Englander@doj.state.or.us
Shaunee.Morgan@doj.state.or.us
Of Attorneys for Defendant State of Oregon